

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQUITTAL APPEAL NO. 94 OF 2015

- Smt. Vidya Sahu, W/o Kamlesh Sahu, aged about 28 years, R/o Village Bhasera, P.S. Findgeswar, District: Gariyaband (C.G.)

... Appellant

Versus

1. State of Chhattisgarh, Through – Station House Officer, Police Station : Fingeshwar, District - Gariyaband (C.G.)
2. Santosh Sahu, S/o Niranjan Sahu, aged about 37 years
3. Smt. Purnima Sahu, W/o Hemlal Sahu, aged about 40 years

Both are R/o Village Bhasera, P.S. Findgeswar, District: Gariyaband (C.G.)

... Respondents

For Appellant	:	Mr. Gurudev I. Sharan, Advocate.
For Respondent 1	:	Mr. Bhupendra Singh, Panel Lawyer.
For Respondents 2 & 3	:	Mr. Manoj Paranjpe, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per NAVIN SINHA, C.J.

14/09/2015

1. The present appeal has been filed assailing the acquittal of the Respondents 2 & 3 on 30.4.2015 by the Additional Sessions Judge, Gariyaband, of the accusation under Sections 376, 506 (Part II), 120 B and 109 IPC.
2. Assailing the acquittal, learned Counsel for the Appellant submits that the Trial Judge was basically persuaded to grant acquittal because of delay in lodging of the FIR. The explanation for the delay, that the Prosecutrix feared for the protection of her husband as she had been told that if she reported the matter he would be killed has not been properly considered. It was next submitted that the evidence of the Prosecutrix, who is a victim herself, has not been properly appreciated

and accepted when the law provides that conviction can be based on the evidence of the Prosecutrix alone also.

3. Learned Counsel for the Respondents submits that the order of acquittal is well reasoned and considered displaying full application of mind to the evidence before the learned Trial Judge including the statement of the Prosecutrix, her husband, coupled with all attending circumstances. The occurrence was of August, 2013 and she informed her husband as late as on 12.3.2014 followed by the FIR on 19.3.2014. The Trial Judge has adequately noticed the conduct in the contradictions of the statements of the Prosecutrix and her husband under Section 161 Cr.P.C. and in the Court deposition. It is further submitted that the order of acquittal is not to be lightly interfered unless there has been complete misappreciation of evidence leading to gross miscarriage of justice.

4. Reliance has been placed by the learned Counsel for Respondents 2 & 3 on (2014) 5 SCC 730 (Muralidhar alias Gidda & Another Vs. State of Karnataka) and 2012 (2) CGLRW 499 (Nankidau Vs. State of Madhya Pradesh)

5. We have considered the submissions on behalf of the parties and have gone through the order of acquittal also.

6. The Trial Judge has adequately considered the electronic evidence by way of mobile communications between the two accused which were not proved in accordance with law much less did it contain any materials of calls exchanged prior and after the occurrence as alleged by the Prosecutrix who was a married woman. It is also been noticed that the husband of the Prosecutrix was an accused in a complaint lodged by Respondent No. 3 earlier considering which the

Trial Judge was not satisfied with the veracity of the allegations and proceeded to grant acquittal summing up his conclusions at paragraph 33 of the judgment.

7. The order of acquittal is not to be lightly interfered with unless there has been grave miscarriage of justice or consideration of the evidence was perverse. Even if two conclusions are possible on basis of the same evidence, the one favourable to the accused has to be taken and it will not be proper for the appellate Court to interfere with the acquittal merely because it may be of a difference opinion. Failure to consider admissible evidence or admitting inadmissible evidence are some of the other grounds on which the order of acquittal may be interfered with. In the facts of the present case, none of the circumstances exist presently warranting interference.

8. We find no reason to interfere with the order of acquittal.

9. The appeal is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge